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ALEXANDRIA, VA 22313-1450  
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RESEARCH IN MOTION  
ATTN: GLENDA WOLFE  
BUILDING 6, BRAZOS EAST, SUITE 100  
5000 RIVERSIDE DRIVE  
IRVING, TX 75039

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**JUN 19 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Wen Zhao, et. al. :  
Application No. 10/789,298 : **DECISION ON PETITION**  
Filed: February 27, 2004 :  
Attorney Docket No. 0108-0241/US :

This is a decision on the petition under 37 CFR 1.181 (no fee), filed October 24, 2007, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the non-final Office action mailed January 17, 2007, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on October 4, 2007.

Petitioner asserts that the Office action dated January 17, 2007 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

The petition fails to satisfy requirement (3) above.

It is noted that while petitioner provided the Office with a copy of "a Patent Record Sheet from the Practitioner's docketing software, which includes the docket record where the non-received Office Action would have been entered had it been received and docketed," it is not legible.

Also, the petition fails to describe the system used for recording an Office action received at the correspondence address of record with the USPTO and a statement that the docketing system is sufficiently reliable.

Additionally, a copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **If no such master docket exists, the practitioner should so state and provide other evidence<sup>1</sup> such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.** See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

In view of the above, the docket record presented cannot be relied on to show that all USPTO communications were entered and docketed when received. Accordingly, absent the required evidence to establish nonreceipt of the Office action of January 17, 2007, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,540 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was

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<sup>1</sup> Any evidence submitted must be legible.

discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

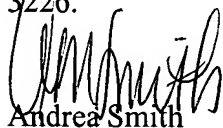
Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Mail Stop PETITION  
                              Commissioner for Patents  
                              P. O. Box 1450  
                              Alexandria, VA 22313-1450

By hand:                 U. S. Patent and Trademark Office  
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                              401 Dulany Street  
                              Alexandria, VA 22314

By facsimile:           **(571) 273-8300**  
                              Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.



Andrea Smith  
Petitions Office  
Office of Petitions

cc:     John J. Oskorep, Esq. LLC  
          One Magnificent Mile Center  
          980 North Michigan Avenue, Suite 1400  
          Chicago, IL 60611